

**Senator Todd Weiler** proposes the following substitute bill:

1                   **CONCURRENT RESOLUTION ON THE NATIONAL DEFENSE**

2                                   **AUTHORIZATION ACT**

3   2012 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Todd Weiler**

6   House Sponsor: Daniel McCay

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8                   **LONG TITLE**

9                   **General Description:**

10                   This concurrent resolution of the Legislature and the Governor expresses strong  
11                   disapproval of portions of the National Defense Authorization Act for Fiscal Year  
12                   2012.

13                   **Highlighted Provisions:**

14                   This resolution:

15                   ▶ expresses disapproval of Sections 1021 and 1022 of the National Defense  
16                   Authorization Act for Fiscal Year 2012, which authorizes:  
17                   • military detention without trial for suspected terrorists; and  
18                   • trial by military commission or transfer to a foreign country of persons detained;  
19                   and

20                   ▶ urges Congress to repeal or clarify Sections 1021 and 1022 of the National Defense  
21                   Authorization Act for Fiscal Year 2012.

22                   **Special Clauses:**

23                   None

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25                   *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*



26 WHEREAS, the Congress of the United States passed the National Defense  
27 Authorization Act for Fiscal Year 2012 ("2012 NDAA") on December 15, 2011;

28 WHEREAS, the President of the United States of America signed the 2012 NDAA into  
29 law on December 31, 2011;

30 WHEREAS, Section 1021 of the 2012 NDAA affirms the authority of the Armed  
31 Forces of the United States to detain covered persons pending disposition under the law of war  
32 and defines covered persons to include persons associated with the attacks on September 11,  
33 2001 or members and supporters of al-Qaeda, the Taliban, or other associated forces that are  
34 engaged in hostilities against the United States;

35 WHEREAS, Section 1021 of the 2012 NDAA states that disposition under the law of  
36 war includes detention without trial until the end of hostilities, trial by military commission,  
37 and transfer to the custody of the person's country of origin or any other foreign country or  
38 entity;

39 WHEREAS, Section 1022 of the 2012 NDAA requires that members of al-Qaeda  
40 captured in the course of hostilities be detained in military custody pending disposition under  
41 the laws of war, except that it is not a requirement to detain a citizen of the United States or  
42 lawful resident alien of the United States on the basis of conduct taking place within the United  
43 States;

44 WHEREAS, there is uncertainty whether Sections 1021 and 1022 could be used to  
45 authorize indefinite military detention of United States citizens, legal permanent residents, and  
46 others without charge or trial within the United States;

47 WHEREAS, Section 1021 could be used to allow the President to determine whether or  
48 not a trial, and what type of trial, will be held for those arrested under the authority of the 2012  
49 NDAA;

50 WHEREAS, the indefinite military detention of any person in the United States without  
51 charge or trial violates the right to be free from deprivation of life, liberty, or property without  
52 due process of law guaranteed by the United States Constitution, Amendment V and Utah  
53 Constitution, Article I, Section 14;

54 WHEREAS, the indefinite military detention of any person within the United States  
55 without trial violates the right to a speedy trial by an impartial jury guaranteed by the United  
56 States Constitution, Amendment V and Utah Constitution, Article I, Section 12; and

57 WHEREAS, it is indisputable that the threat of terrorism is real and that the full force  
58 of appropriate and constitutional law must be used to defeat this threat; however, winning the  
59 war against terror cannot come at the great expense of mitigating basic, fundamental,  
60 constitutional rights:

61 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the State of Utah, the  
62 Governor concurring therein, expresses strong disapproval of an interpretation and application  
63 of Section 1021 or 1022 of the 2012 NDAA that violates a right guaranteed by the United  
64 States Constitution and the Utah Constitution.

65 BE IT FURTHER RESOLVED that the Legislature of the State of Utah, the Governor  
66 concurring therein, urges the United States Congress to repeal or clarify Sections 1021 and  
67 1022 of the 2012 NDAA to protect the rights guaranteed by the United States Constitution and  
68 the Utah Constitution.

69 BE IT FURTHER RESOLVED that a copy of this resolution should be sent to the  
70 Majority Leader of the United States Senate, the Speaker of the United States House of  
71 Representatives, and to the members of Utah's congressional delegation.